(9)

No. 95-1608

In The

# Supreme Court of the United States

October Term, 1995

LOU MCKENNA, Director, Ramsey County Department of Property Records and Revenue; and Joan Anderson Growe, Secretary of the State of Minnesota,

*Petitioners,*

vs.

TWIN CITIES AREA NEW PARTY,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit**

## BRIEF AMICI CURIAE OF THE REFORM PARTY, THE PEROT REFORM COMMITTEE, AND PEROT 96 IN SUPPORT OF RESPONDENT

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## INTERESTS OF AMICI CURIAE

This brief is submitted in support of the respondent Twin Cities Area New Party by the Reform Party (an affiliation of supporters of local and Reform Parties throughout the United States), the Perot Reform Committee, and Perot 96 (collectively referred to herein as "the Reform Party"). Because this case directly affects the First Amendment rights of political parties in general to nominate and elect candidates without state interference, and the rights of minor parties in particular to operate free from state regulations burdening them disproportionately *as* minor parties—and ultimately to compete meaningfully and contribute meaningfully to the formation of public policy—it is of critical importance to the Reform Party that the decision below be affirmed.[1]

While the Reform Party's broad interest in relegalizing fusion is identical to that of the New Party, our experience and stature are distinct in ways bearing on the State's argument in this case. That argument suggests that in doing the otherwise hard work of minor-party building, fusion permits the substitution of theft for honest toil—that it provides an illegitimate means by which minor parties can "bootstrap" their way to ballot status or to maintaining that status. It also suggests that the tactic is important only to truly tiny and poorly resourced minor parties. And it argues that fusion provides an unconscionable form of "affirmative action" for minor parties, and that the demand for this right amounts to a demand for state subsidy of minor party growth.

These arguments are baseless. As the New Party rightly argues, fusion does not amount to "affirmative

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[1] The Reform Party files this brief with the consent of both parties, as reflected in separate submissions to the Court.

action" for minor parties; it simply removes an artificial wedge between the real level of minor party support that exists in the electorate and the level that can be prudently expressed at the polls. As the New Party rightly argues, fusion does not sanction theft, but recovery—of the votes that would have gone to a minor party but for the fusion ban the New Party rightly argues, the votes cast for "fusing" minor parties—however small—are no less legitimate or real than any other votes, and therefore no less worthy of counting in determining ballot access. And as the New Party rightly argues, it is essential that ballots be designed in a "disaggregated" fashion—with separate ballot lines for the different parties nominating a fusion candidate—permitting those votes to be used that way. Emphatically, the Reform Party joins the New Party in making all these claims.

Still, the very "minor" stature of the Twin Cities Area New Party, and the national New Party generally, may themselves give doubt about the legitimacy of those claims. And so, as a much better resourced and successful minor party than the New Party, the Reform Party wishes here to join the argument. With a credibility that New Party may be thought to be lacking, the Reform Party wishes to argue that fusion is important to minor parties, *whatever their resources*, merely because of their status as minor, as a result of the familiar dynamics of our "winner take all" election system.

Unlike the New Party, we and our supporters have already run someone for President of the United States, gaining a larger share of the vote than any other 20th Century "minor" party since former President Theodore Roosevelt. Unlike the New Party, we and our supporters command easy access to national TV and other media. Unlike the New Party, we have achieved and maintained ballot status in some 28 states, and will shortly be running



our 1996 Presidential candidate on ballot lines identified with us in virtually all 50. Unlike the New Party, we have access to millions of dollars in public funds to support that candidacy. Unlike the New Party, we have more than a million members. Unlike the New Party, we have access to countless other millions of dollars through the contributions of those members.

And still, *like* the New Party, we deem the right to fuse *essential* to our ability to grow and to advance the political interests of our members and supporters—and the denial of that right to oppose an unconscionable burden on core rights guaranteed by the First and Fourteenth Amendments.

## SUMMARY OF ARGUMENT

By infringing the rights of minor parties to nominate "whatever candidate" they choose, and by burdening the rights of minor parties to operate free of election law restrictions falling disproportionately on them as minor, Minnesota's absolute ban on fusion violates core values protected by the First and Fourteenth Amendments. This violation is no more severe for a poorly-resourced minor party than one with millions of members and ample resources to conduct national campaigns. The reason is that it goes to core rights of political parties and their supporters —however large that party and its members—and the core rights of minor parties—whatever the variation in their size and resource and membership base—*as* minor parties.

## ARGUMENT

The Reform Party has played a key role in the establishment and development of qualified state parties in 28 states. Recently the Reform Party held its founding

convention, nominating Ross Perot as its presidential candidate for 1996. Mr. Perot will run on its line in the 28 states where the party is now qualified, and will run as an independent presidential candidate (but with a Reform Party label) where such an independent candidacy is prerequisite to the Reform Party's securing permanent ballot status as a political party. The Reform Party fully expects that votes cast for Perot in those remainder states will soon result in the qualification of established Reform Parties in many of them. It is our hope that these parties will soon operate "up and down" the ballot—not only running candidates for President, but also for the United States Senate and House of Representatives, and in state and local races.

There should be no question about the seriousness of this effort. In his independent run for the Presidency in 1992, Mr. Perot received a larger share of the popular vote than any "third party" candidate since former President Theodore Roosevelt. The Party boasts more than a million members, and Mr. Perot and the Party are now generally seen as important forces in American electoral politics—and as having made a contribution to voter mobilization and the range of political debate within it.

Even given this record of success, the Reform Party considers the restoration of a right to fusion indispensable to our growth and effective advocacy for the values of our members. This belief is reflected in our efforts to date: where fusion is currently legal, we or closely allied efforts —*e.g.*, in Minnesota, the Independence Party that is now affiliated to our national effort—have already attempted to use it, and we will use it in New York and other places where it is currently legal. The belief is also reflected in our strategic planning: we envision, like the New Party, running a mix of candidates, some nominated by us alone, some jointly-nominated by us and other parties.



Our appreciation of the importance of fusion is founded on the clear and uncontestable evidence that it provides minor parties the best way, in the American "winner take all" election system, to grow in ways respectful of their values. The Reform Party is an issue-centered party, not a candidate-centered one. If a Democrat or Republican shares our positions on the issues, we are perfectly open to supporting them, and wish to support them if we do not have a more viable alternative candidate. We have no interest in "splintering" American politics. We do have an interest in promoting the distinctive ideology and program of those who associate in the advancement of their political beliefs through us, and in securing the ongoing viability and visibility of that association. In many cases, for a minor party, that is best done by a ballot alliance with a major party. In addition to avoiding the "wasted vote" syndrome that artificially suppresses minor party growth, the very fact of that alliance draws attention to its terms: *viz.* the values upon which the minor party offers its support. For the Reform Party, drawing attention to those values, developing effective means of publicizing them to candidates as the basis of our support, and disciplining office-holders whose election we account for on the basis of them, are our most important task. We wish to implement a new national agenda for public action in America, irrespective of the "home base" partisanship of those who are willing to carry it to implementation. Fusion is critical to us in doing that, in ways consistent with our own organizational integrity and strength.

Thus, with the New Party, the Reform Party asserts that the rights of a political party to substantial autonomy in the governance of its own affairs, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214 (1989); *Norman v. Reed*, 502 U.S. 279 (1992), and the right to exercise that autonomy free of regulations

disproportionately burdensome to new or minor parties, *Anderson* v. *Celebreeze*, 460 U.S. 780 (1983), are fundamental freedoms enjoying direct protection under the First and Fourteenth Amendments. And with the New Party, we assert a right not only to choose our standard bearers freely, but to communicate that choice to our supporters on terms equal to those offered other parties, and to do so on our own separate ballot line. We consider these rights well-founded in the Constitution, and long-standing precedents of this Court.

We are frankly appalled that the State of Minnesota, or any state, would interfere with the right of a party to choose its candidates. Free political competition is literally meaningless if such a right can be simply and absolutely abridged—as Minnesota's absolute ban on fusion clearly and absolutely abridges it. We think fundamental notions of constitutional fairness *require* that the ballot be offered on equal terms to any party qualifying for access to it. And we believe that not offering jointly-nominating parties separate ballot lines for that fusion nomination defeats the very purpose of electoral competition—which is to signal to candidates and other policymakers, as well as other voters, the real character and distribution of electoral sentiment. We also think that not offering a "disaggregated" ballot in the fusion context will create all manner of unnecessary mischief and confusion in determining ballot access and maintenance. Conversely, offering that ballot will provide what historical and contemporary evidence both show to be a legitimate and administratively attractive way to keep ballot maintenance "tied" to actual vote performance. Recognition of this right to a disaggregated ballot is not essential to upholding the opinion of the Court below, however, and even without its recognition fusion remains vital. It permits the Reform Party to signal its support of particular candidates to our members and other supporters, and enables us, in doing that and



thereby mobilizing their support, to make some demonstration of our "worth" to fusion candidates.

The State's arguments in defense of Minnesota's absolute fusion ban are well answered in the New Party's brief, which the Reform Party fully endorses. The interests asserted by the State are either illegitimate or not sufficiently weighty or narrowly advanced by the ban to justify the burden on core freedoms that it imposes.

What we can add to New Party's argument, again, is chiefly the credibility that comes of our greater experience and size. Having spent countless hours and significant sums over the past few years struggling to establish a minor party in the United States, we are impatient with those who would ever more deliberately skew the playing field against them—while suggesting that any effort to right that field constitute illegitimate "subsidy" to their efforts on it. This argument is clearly preposterous on its face, and even more preposterous upon even casual examination of the real practice of "hardball" politics, and the tortuous rules on ballot status acquisition and maintenance—themselves often administered by openly partisan officials—that currently impede the progress of minor parties in the United States, and that have greeted our unusually well-resourced effort to build one. At every step of the way in Reform Party growth, we have faced well-financed, politically powerful, opposition to our efforts from the major parties, holding a *de facto* monopoly on legislative and executive power, and responsible for the nomination of those who would judge the legality of its exercise. This Court should be assured, if it has any doubt on the matter, that minor parties will face obstacles aplenty even upon its striking down Minnesota's absolute fusion ban.

Having had the hard experience of growing a party based most essentially on respect for political freedom and

decentralized democratic principles, we are also impatient with those who would curb that freedom, and substitute their judgment for that of our members and supporters, in the conduct of their political association. Who or what is Minnesota to say how its citizens should associate? Is this not the most fundamental of American freedoms? How could this Court permit such a fundamental and irrational abridgment of those freedoms, when the abridgment only serves the purpose of confusing elected officials about what the people really believe, and stifling the growth of minor party competition to the major political associations that already exist?

We firmly believe this Court cannot. Consensual fusion does no harm to anyone except those who would artificially frustrate political alliance, the growth of minor parties, and clearer and more vigorous assertion of the popular will. And those interests should enjoy absolutely no respect from this Court.

## CONCLUSION

For these reasons, we urge this Court to affirm the judgment of the court of appeals.

Dated: August 29, 1996.

Respectfully submitted,

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